Rev. Rul. 71-447, 1971-2 C.B. 230

A private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption.

The Internal Revenue Service has been asked whether a private school that otherwise meets the requirements of section 501(c)(3) of the Internal Revenue Code of 1954 will qualify for exemption from Federal income tax if it does not have a racially nondiscriminatory policy as to students.

A 'racially nondiscriminatory policy as to students' is defined as meaning that the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Section 501(c)(3) of the Code provides, among other things, for the exemption from Federal income tax of organizations 'organized and operated exclusively for religious, charitable, * * * or educational purposes.'

Section 1.501(c)(3)-1(d)(3)(ii) of the Income Tax Regulations provides that a primary or secondary school that has a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on may qualify for exemption as an educational organization of the character contemplated by Code section 501(c)(3) if it otherwise meets the requirements of that section.

Under common law, the term 'charity' encompasses all three of the major categories identified separately under section 501(c)(3) of the Code as religious, educational, and charitable. Both the courts and the Internal Revenue Service have long recognized that the statutory requirement of being 'organized and operated exclusively for religious, charitable, * * * or educational purposes' was intended to express the basic common law concept. Thus, a school asserting a right to the benefits provided for in section 501(c)(3) of the Code as being organized and operated exclusively for educational purposes must be a common law charity in order to be exempt under that section. That Congress had such an intent is clearly borne out by its description in section 170(c) of the Code of a deductible gift to 'a corporation, trust, fund, or foundation * * * organized and operated exclusively for educational purposes' as a 'charitable contribution.' The Service has followed this concept, as is reflected in Rev. Rul. 67-325, C.B. 1967-2, 113, 116-117, which reads:

> * * * (S)ections 170, 2055, 2106, and 2522 of the Code, to the extent they provide deductions for contributions or other

> transfers to or for the use of organizations organized and operated exclusively for charitable purposes, or to be used for charitable purposes, do not apply to contributions or transfers to any organization whose purposes are not charitable in the generally accepted legal sense or to any contribution for any purpose that is not charitable in the generally accepted legal sense. For the same reasons, section 501(c)(3) of the Code does not apply to any such organization.

Also see section 1.501(c)(3)-1(d)(2) and (3) of the regulations; Amy Hutchinson Crellin v. Commissioner, 46 B.T.A. 1152 (1942), and authorities cited therein.

All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. This principle has been stated as follows in the Restatement (Second), Trusts (1959) Sec. 377, Comment c:

> A trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid.

Although the operation of private schools on a discriminatory basis is not prohibited by Federal statutory law, the policy of the United States is to discourage discrimination in such schools. The Federal policy against racial discrimination is well-settled in many areas of wide public interest as, for example, in transportation, housing, employment, hotels, restaurants and theaters. A recognition of a public interest in eliminating racial discrimination is shown in section 1.501(c)(3)-1(d)(2) of the regulations providing that the 'promotion of social welfare' includes activities 'to eliminate prejudice and discrimination.'

Developments of recent decades and recent years reflect a Federal policy against racial discrimination which extends to racial discrimination in education. Titles IV and VI, The Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000c, 2000c-6 and 2000d and Brown v. Board of Education, 347 U.S. 483, 500 (1954), and many subsequent Federal court cases, demonstrate a national policy to discourage racial discrimination in education, whether public or private.

The issue here is whether a private school that does not have a racially nondiscriminatory policy as to students is 'charitable' within the common law concepts found in section 501(c)(3). The foregoing discussion demonstrates that racial discrimination in education is contrary to Federal public policy. Therefore, a school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common law concepts reflected in sections 170 and 501(c)(3) of the Code and in other relevant Federal statutes and accordingly does not qualify as an organization exempt from Federal income tax.